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NO._____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

JAMES W. BUTLER and
GUARANTY NATIONAL BANK,
an OKLAHOMA CORPORATION,
Petitioners,

vs.

FEDERAL NATIONAL
MORTGAGE ASSOCIATION,
Respondent.

JUDGMENT ON REVIEW FROM THE SUPREME COURT
OF
OKLAHOMA

PETITION FOR WRIT OF CERTIORARI

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64 pp

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PETITION FOR WRIT OF CERTIORAI

QUESTIONS PRESENTED FOR REVIEW

1.) Does Article 1, Section 10, Federal Constitution, protect the Petitioner Butler's vested right of legal exemption from the demands of the Respondent under the illegal and void mortgage loan contract acquired prior to judicial construction placed upon UCCC Credit Sales Statutes, and applied retroactively to validate and ratify said contract?

2.) Does the Oklahoma Supreme Court's judicial construction placed upon the UCCC Credit Sales Statutes, 14A O.S.A. 1981 §2-101 et seq., on 2/6/84, and applied retroactively, a change in judicial construction after rights were acquired, to validate and ratify the unauthorized mortgage loan contract dated 7/24/78, violation of law under the applicable provisions of the UCCC Loan Statutes, 14A O.S.A. 1969 §3-101 et seq., and debtor's remedies under the provisions of 14A O.S.A. 1969 §5-202(2), deny and deprive the Petitioner Butler of his Federal Constitutional rights protected

under the provisions of Article 1, Section 10, and the Fourteenth Amendment, Section 1?

3.) Does the Fourteenth Amendment, Section 1, Federal Constitution, protect the Petitioner Butler from the Oklahoma Supreme Court's acts on 2/6/84 beyond its delegated power or authority?

4.) Does the Oklahoma Supreme Court's acts beyond its delegated power or authority, 2/6/84, deny and deprive the Petitioner Butler of his rights of due process of law, and equal protection of the law protected under the Federal Constitutional provisions of the Fourteenth Amendment, Section 1?

5.) On 7/24/78, and 7/27/78, did the federal statues 12 U.S.C. §1709-1a(a)(b) enacted on 6/30/76 preempt or exempt the original mortgagee from complying with the duly required provisions prescribed under the Oklahoma UCCC-Loans, 14A O.S.A. 1969 §3-101 et seq., insofar as legally doing business as a supervised lender in the State of Oklahoma to make and assign

the said mortgage loan without being duly licensed to do so?

6.) On 7/24/78, and 7/27/78, did the original mortgagee's failure, refusal and neglect to obtain the duly required license to legally do business as a supervised lender in Oklahoma to make and assign the said mortgage loan in issue as prescribed under the provisions of 14A O.S.A. 1969 §3-502, render the same, and the assignment thereof, illegal and void under the provisions of 14A O.S.A. 1969 §5-202(2)?

7.) Did the assumption agreement dated 8/24/81 validate and ratify the illegal and void mortgage loan contract in issue in the hands of the Respondent herein, the assignee?

8.) Did the assignment contract dated 7/27/78 validate and ratify the illegal and void mortgage contract?

9.) Is the Respondent herein, the assignee, the bona fide purchaser, and the holder in

due course of the illegal and void mortgage loan contract in issue?

10). Can the Respondent herein prevail in the Oklahoma and Federal Courts when it is compelled to solely rely upon, and prove the illegal and void mortgage loan contract in issue as the sole basis for its cause of action?

11). Does the said judgment complained of herein contradict decisions or judgments rendered by the Federal District Courts of Oklahoma, and the Tenth Circuit Court of Appeals in like or similar cases?

REFERENCE TO UNOFFICIAL REPORTS

1.) Oklahoma Supreme Court's Judgment rendered, filed and mandate ordered issued instanter on 2/6/84.

See Appendix 01, page i

2.) Oklahoma Supreme Court's order denying Petitioner Butler's Motion rendered and filed on 3/26/84.

See Appendix 02, page iii

3.) Trial Court's judgment rendered on 2/17/83.

See Appendix 03, page iv

JURISDICTIONAL STATEMENT

That on 2/6/84, the Oklahoma Supreme Court's judgment was rendered, filed and mandate ordered issued instanter reversing the trial court's judgment rendered on 2/17/83 that voided the unauthorized supervised mortgage loan contract dated 7/24/78, and dismissed the Respondent's mortgage foreclosure action with prejudice.

That said judgment gave retroactive effect to the Court's judicial construction placed upon the inapplicable UCCC Credit Sales Statutes, 14A O.S.A. 1981 §2-101 et seq., which validated and ratified the unauthorized supervised mortgage loan contract that was void ab inito, and in toto as in violation of law, and under Oklahoma law, such acts amount to a law passed in violation of Article II, Section 15, Oklahoma Constitution, and Article I, Section 10, Federal Constitution, and are unconstitutional as impairing Contractual Obligations. McLAIN v. OKLAHOMA COTTON GROWERS' ASS'N, infra; TIDAL OIL CO. et al v. FLANAGAN, infra, and HANN et al v.

CITY OF CLINTON, OKL ex rel SCHUETTER and five, infra.

Further, the said judgment is a wrongful exercise of the Court's jurisdiction, that violates the State and Federal Constitutions, which amounts to an act by the said court beyond the power and authority delegated to it, thus, said judgment is a nullity, by reason said acts were void. VALLELY v. NORTHERN FIRE & MARINE INS. CO., 254 N.S.348, 41 S.Ct.116 (1920)

Further, the said Court's wrongful exercise of its jurisdiction violated the due process of law provisions under Amendment 14, Section 1, Federal Constitution, by reason the said Court acted beyond its delegated power of authority, thus, it was absent one element of jurisdiction, the power or authority to render said judgment, and no judgment of a court is due process of law if rendered without jurisdiction. PRODUCERS INV. CO. et al v. COLVERT, Okl., 100 P.2d 1005(1940), and further, the Court's wrongful exercise of its jurisdiction violated the equal protection of the law pro-

visions under Amendment 14, Section 1, Federal Constitution, by reason due process of law being frequently spoken of as including equal protection of the law which is secured by laws operating or all alike. WALLACE et al v. CURRIN et al, (4th CCA) 95 F.2d 856 (1938)

That said judgment is in conflict with decisions rendered in the Federal District Courts of Oklahoma, and the U.S. 10th Circuit Court of Appeals, and the Honorable Court needs to settle this conflict of authority insofar as the enforcement of illegal and void contracts in the Oklahoma and federal courts; and the impairment of obligations by judicial construction placed upon statutes to validate and ratify contracts void as in violation of law, are concerned.

Further, the federal questions necessary to invoke or sustain this Honorable Court's jurisdiction over the Oklahoma Supreme Court's judgment on 2/6/84, in the case at bar, arose from the unanticipated and unexpected acts of said court on 2/6/84 when said mandate was ordered issued on date judgment was rendered

and filed therein, which under the Rule 1.203 (A)(1), Rules-Civil Appellate Procedure left no avenue or means to add to the record to raise said necessary federal questions by Petition for Rehearing, therefore, the said instant case is subject to an exception to the rule insofar as the raising of such federal questions by Petition for Rehearing is concerned, because to hold to said rule would leave a serious gap in the remedy for such violations because this court is the said Petitioner's last and only source of relief available. See SAUNDERS v. SHAW et al, infra. See Proposition VII under Argument in Support of Writ.

Therefore, the jurisdiction of this Honorable Court is legally invoked to review the said judgment of the Oklahome Supreme Court, and to determine the violations of the federal constitution, conflicts of authority and certain other issues raised herein, pursuant to the provisions prescribed under Title 28, United States Code, §§§ 1257(3); 2101(c); 2103 and 2106.

PROVISIONS OF THE CONSTITUTIONS, STATUTES AND RULES

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STATEMENT OF THE CASE

1.) That on 7/24/78, the original mortgagee, Mortgage Clearing Corporation, who was engaged in the business of financing mortgages, entered into a contract with the original mortgagor, Barbara A. Foster, to finance the purchase of a home for her family which was a supervised consumer loan pursuant to the provisions under 14A O.S.A. 1969 §3-501; 14A O.S.A. 1971 §3-105, 14A O.S.A. 1971 §104 and 14A O.S.A. 1971 §5-201(2), by reason, the original mortgagee contracted for, and received a finance charge of 10.5% per annum on the unpaid balance of the principal sum in the amount of $14,100.00, as defined under the provisions of 14A O.S.A. 1971 §3-107 (3) (a)(b); (b), for a period of thirty (30) years, or 360 monthly installments, in exchange for the original mortgagor's promise to pay the actual sum financed in the amount of $13,459.67, plus prepaid finance charges in the amount of $640.33, which sums totalled the said principal sum, and further, the said finance charge included interest at the rate of 9.5% per annum on the unpaid principal balances, and other related

charges in the amount of $1,502.90 provided for under the provisions of 14A O.S.A. 1971 §3-109.

2.) Further, on 7/24/78, the said supervised loan in issue was unauthorized, under the provisions of 14A O.S.A. 1971 §3-502, by reason the original mortgagee had failed, refused and neglected to obtain the duly required license to do business as a supervised lender in Oklahoma, and further, as a direct result of said supervised loan being unauthorized, it was void ab initio and in toto under the provisions of 14A O.S.A. 1971 §5-202(2).

3.) That on 7/27/78, the original mortgagee assigned the said void supervised loan in issue to the Respondent herein, and further, the said assignment was unauthorized under the provisions of 14A O.S.A. 1971 §3-501(2), by reason the original mortgagee was not duly licensed as a supervised lender.

4.) Further, on 7/24/78, the said original mortgagee was not preempted or exempted under the provisions of 12 USCS §1709-1a (a)

(b) from complying with the provisions under 14A O.S.A. 1971 §502, and 14A O.S.A. 1971 §3-501 (2), governing the duly required licensing of supervised lenders in Oklahoma, by reason the said applicable UCCC-Loan Statutes only required a license; placed no limit on the rate of interest charged; did not interfere, hinder or impede the purpose and goals prescribed under the provisions of 12 USCS 1709 et seq., and the said Statute 12 USCS 1709-1a (a)(b) was enacted only for the State of California.

5.) That on 8/24/81, the Petitioner Butler entered into an assumption agreement with the original mortgagor, to assume and pay the void supervised loan.

6.) Further on 8/24/81, the Respondent herein, the assignee, was totally absent any lawful consideration as is duly required under the provisions of 15 O.S.A. 1971 §108 to offer, in exchange, for the Petitioner Butler's promise to pay said void unauthorized supervised mortgage loan, by reason, as previously demonstrated herein, both the said unauthorized

supervised mortgage loan and the assignment therefore was void ab inito and in toto, hence, the said assumption agreement was likewise void pursuant to the provisions under the authority of 15 O.S.A. 1971 §109.

7.) That, on 4/26/83, the Respondent herein, the assignee, filed and issued its process against the Petitioners to foreclose the said void note, mortgage, assignment and assumption contracts as Exhibits "A", "B", "C", and "E" respectively, attached to said process.

8.) Further, on 2/17/83, during the hearing and determination of the Petitioner Butler's Motion to Dismiss as Amended, and the Respondent's Motion for Summary Judgment as Supplemented, the trial court vacated and voided the said unauthorized supervised mortgage loan, and dismissed the Respondent's foreclosure action with prejudice after hearint the testimony of Dale Newcomb, an examiner for the Department of Consumer Credit, State of Oklahoma, who testified to the effect that he had examined the said mortgage loan contract dated 7/24/78, and the duly required

federal disclosure statement dated 7/24/78, and upon his examination of said documents he found that the original mortgagee had contracted for, and received a finance charge of 10.5% per annum, and that said loan was an unauthorized supervised mortgage loan, thus, it was voided ab initio and in toto under the authority of the provisions of 14A O.S.A. 1969 §5-202(2), because the original mortgagee was not duly licensed on 7/24/78 to do business as a supervised lender in Oklahoma, which testimony was supported by deposition of the original mortgagee's president, and the pleadings, answers to interrogatories and admissions by the Respondent herein, and thereafter, Mrs. Elizabeth Fink, a Vice-President of the original mortgagee, Mortgage Clearing Corporation, testified to the effect that the rate of finance charge on said loan in issue was less that 10% per annum according to her computer calculations on 2/17/83 under her instructions, but upon being cross-examined she admitted that she was not familiar with finance charges, or how to calculate the same.

9.) Further, and unexpected by his Petitioner, on 2/6/84, the Oklahoma Supreme Court's judgment rendered, filed and mandate ordered issued instanter, reversed the trial court's judgment rendered on 2/17/83, which vacated and voided the mortgage loan contract in issue dated 7/24/78, and dismissed the Respondent's mortgagee foreclosure action with prejudice, by exercising its jurisdiction wrongfully in applying retroactively its judicial construction placed upon the UCCC-Credit Sales Statutes, 14A O.S.A. 1981 §2-101 et seq., to validate mortgage loan, void as in violation of 14A O.S.A. 1969 §3-101 et seq., UCCC-Loan Statutes, by debtor's remedies under the provisions of 14A O,S.A. 1969 §5-202(2).

11.) On or about 2/13/84, this Petitioner filed his motion to stay effectiveness of said mandate ordered issued instanter on 2/6/84 which was sustained on 3/26/84 by the said Court, and further, on or about 2/14/84, this Petitioner filed his Notice of Intent to Appeal in the Oklahoma Supreme Court.

12.) Further, on or about 3/1/84, and

3/8/84, the Petitioner Butler filed his Motion and Supplement thereto respectively, to file his Petition for Rehearing Out of Time which raised the issues of denial and deprivation, of his Federal Constitutional rights protected under Article 1, Section 10, and the Fourteenth Amendment, Section 1, thereof, conflict of authority, and certain other issues to which the Oklahoma Supreme Court failed, refused and neglected to address in its order denying said Motion as Supplemented in citing Oklahoma Supreme Rule 1.203(A)(1) as the sole basis or authorization for its denial.

ARGUMENT IN SUPPORT OF WRIT

I

THE MORTGAGE CONTRACT DATED 7/24/78, IS A SUPERVISED CONSUMER LOAN

On 7/24/78, the said contract in issue was not a consumer credit sales contract because the said contract failed the test for a Consumer Credit Sales, as defined under the provisions of 14A O.S.A. 1971 §2-104, by reason the original mortgagee was not the seller of the said

real property in issue, nor was it regularly or primarily engaged in the business of selling real property, therefore, the said contract is a consumer loan as is clearly demonstrated in paragraph one (1), under Statement of the Case herein, by reasons, said contract meets the tests defined under the provisions of 14A O.S.A. 1971 §3-104, and 14 O.S.A. 1971 §3-105, which definitions are further sustained by judicial construction in BARNES v. HELFENBEIN et al, OKL., 548 P.2d 1014 (1976), wherein the Court held:

> "The statutory standards to be utilized in determining whether a loan is a "consumer loan" are lineated by 14A O.S.A. 1971 §§ 3-104, 3-105."

Further, the said statutory definitions are sustained by judicial construction in STRICKLIN v. INVESTOR'S SYNDICATE LIFE INS & ANN. CO., OKL., (DCWD) 391 F. Supp 246 (1975), and further, the said loan is a supervised consumer loan as defined under the provisions of 14A O.S.A. 1971 §3-501(1), because the rate of finance charge charged per annum exceeded 10% on the same. See Appendix 8, at page xviii, the

Petitioner Butler's trial exhibit #1, copy of the original mortgagee's disclosure statement dated 7/24/78.

II

THAT THE MORTGAGE LOAN, AND THE ASSIGNMENT CONTRACTS, DATED 7/24/78, AND 7/27/78 RESPECTIVELY, ARE UNAUTHORIZED AND ARE VOID AB INITO, AND IN TOTO UNDER OKLAHOMA LAW.

That the mortgage loan and the assignment, assigning the same, dated 7/24/78, and 7/27/78 respectively, were unauthorized under the provisions of 14A O.S.A. 1971 §3-501(2), and 14A O.S.A. 1971 §3-502, because the original mortgagee was not licensed to do business as a supervised lender in Oklahoma. See D219, at page 3, lines 24-25, and at page 4, lines 1-2, deposition of Jimmy K. Jones, President of the Mortgage Clearing Corporation, the original mortgagee. See T218, at page 6, lines 13-25, at page 7, lines 1-7, at page 7, lines 16-24, and at page 8, lines 5-18, testimony of Dale O. Newcomb, Examiner, Department of Consumer Affairs, State of Oklahoma. See R55-56, Respondent's Response to the Petitioner Butler's

First Set of Interrogatories, Nos. 3 and 4. Hence, the said loan and assignment were rendered void ab inito and in toto under the provisions of 14A O.S.A. 1971 §5-202(2), which statutory provisions are sustained by judicial construction placed upon said statute in KUYKENDALL v. MALERNEE, OKL. App., 516 P.2d 558 (1973), wherein the court held:

> "It is obvious that the legislative objective in these statutes is to attach disadvantageous consequences or penalties to acts or ommissions of lenders during a loan transaction and thereby discourage them." Void" as that term is used in this provision does not mean that the transaction is to be considered for other purposes as if it had never occurred."

Further, the said statutory provision is sustained by judicial construction placed upon said statute insofar as an assignee, or assignment is concerned as to validation and ratification of the said loan, in FIRST NATIONAL BANK OF AMARILLO v. LAJOIE, OKL., 537 P.2d 1207 (1975), wherein the court held in citing from 5B Bender's Uniform Commercial Code Service, §92B.33, considers provisions of Uniform Consumer Credit Code which makes certain agree-

ments void:

> "Certainly any provisions in the credit agreement which is unenforceable or void is equally so against either the original creditor or assignee."

Further, the assignment contract is founded upon illegal consideration which is the said void mortgage loan contract, thus, it to, is void. In HAMILTON v. CASH, OKL., 91 P.2d 80 (1939), and THOMAS v. OWENS OKL., 241 P.2d 114 (1952), the court held:

> "A contract founded on illegal consideration, on which is made to further matter or thing prohibited by statute or to aid or assist any party therein is void, and such contract will not be enforced by courts."

III

THE ASSUMPTION AGREEMENT DATED 8/24/81 TO ASSUME SAID MORTGAGE LOAN WAS RENDERED VOID DUE TO THE ABSENCE OF ANY LAWFUL CONSIDERATION FOR THE PETITIONER BUTLER'S PROMISE TO PAY.

The assumption agreement dated 8/24/81, to assume and pay the said void mortgage loan is void for several reasons, (1) because the said mortgage loan is absent any valid or lawful consideration as is duly required under the provisions of 15 O.S.A. 1971 §108, and as a

result of its absence of any lawful consideration it is rendered void under the provisions of 15 O.S.A. 1971 §109, HAMILTON v. CASH, supra, and THOMAS v. OWENS, supra; (2) because the void assignment contract assigning the same could not, and did not validate or ratify the said void mortgage loan, FIRST NATIONAL BANK OF AMARILLO v. LAJOIE, supra; and (3) because the Respondent, the assignee, is not the bona fide purchaser, nor is it the holder in due course of the said mortgage loan, by reason of its inherent illegalities which prevented by transfer of rights, title and interest in, and to said same. KEYS v. PONDER, OKL., 226 P.73. Further, in MAY v. WHITBECK, MONT., 113 P.2d 332 (1941), wherein the court held:

> "A contract is rendered illegal by prior illegal contract with which it is connected and out of which it immediately grows, and, hence, every new agreement in furtherance of, or for purpose of carrying into effect, unexecuted provisions of a previous illegal agreement is likewise illegal and void."

IV

ON 7/24/78, AND 7/27/78, THE ORIGINAL MORTGAGEE WAS NOT PREEMPTED OR EXEMP-

TED FROM COMPLYING WITH THE UCCC LOAN STATUTES BY VIRTUE OF FEDERAL LAW INSOFAR AS OBTAINING THE DULY REQUIRED LICENSE TO DO BUSINESS AS A SUPERVISED LENDER IN OKLAHOMA.

On 7/24/78, and 7/27/78, the original mortgagee was not preempted or exempted under the provisions of 12 USCS §1709-1a(a)(b), enacted on 6/30/76, from complying with the Oklahoma UCCC Loan Statutes by virtue of same, insofar as obtaining the duly required license to do business as a supervised lender in Oklahoma, by reason said federal statute was enacted for the State of California as is clearly stated in the legislative history, at page 17, commencing at paragraph five, Public Law 94-324, that states in part:

> "Section 8 of S.2529, as reported would preempt a state's constitutional usuary provision which limits the interest rates chargeable on FHA/VA mortgages by a certain type of lenders while not imposing rate limits on mortgages made by other lenders. At present, this section would apply only to California." (EMPHASIS ADDED)

Further, the State of Oklahoma had a similar problem which the legislature addressed and corrected on 7/1/69, by enacting 14A O.S.A. 1969 §1-101 et seq., more commonly known as

the Uniform Consumer Credit Code of Oklahoma, which simplified, clarified and modernized the law governing usurious loans. STRICKLIN INVESTOR'S SYNDICATE LIFE & ANN. CO., supra, and further, the effect of the passage of the UCCC was to repeal all existing ceilings on interest rates for loans which was at a maximum of 10% before the passage of the said statutes. BARNES v. HELFENBEIN et al, supra.

V

ON 7/24/78, and 7/27/78, BOTH STATE AND FEDERAL LAW, AND THE SETTLED LAW OF THE LAND GOVERNED THE SAID LOAN AND THE ASSIGNMENT THEREOF.

On 7/24/78, and 7/27/78, the Statutes, both state and federal, and the settled law of the land at the time the said mortgage loan and the assignment thereof, were made, became a part of them and must be read into them. MCLAIN v. OKLAHOMA COTTON GROWERS' ASS'N, OKL., 255 P.260 (1927), and further, both state and federal statutory provisions enacted, and judicial construction placed upon same after 7/24/78, and 7/27/78, did not, and could not ratify the

said contracts, by reason of their inherent illegalities. McLAIN v. OKLAHOMA COTTON GROWER'S ASS'N, supra. Further, on the aforementioned dates, the UCCC Credit Sales Statutes, 14A O.S.A. 1971 §2-101 et seq., were not applicable to the said mortgage loan, by reason the said loan transaction did not meet the test for a Consumer Credit Sale, as defined under the same 14A O.S.A. 1971 §2-104.

VI

ON 2/6/84, THE OKLAHOMA SUPREME COURT'S REVERSAL OF THE TRIAL COURT'S JUDGMENT WHICH IS FOUNDED UPON A RETROACTIVE APPLICATION OF ITS JUDICIAL CONSTRUCTION PLACED UPON THE UCCC CREDIT SALES STATUTES VIOLATED THE PETITIONER BUTLER'S FEDERAL CONSTITUTIONAL RIGHTS.

That on 2/6/84, the Oklahoma Supreme Court rendered, filed and ordered mandate issued instanter its judgment reversing the trial court's judgment rendered on 2/17/83 that vacated and voided the mortgage loan contract dated 7/24/78, pursuant the provisions under 14A O.S.A. 1971 §5-202(2), and dismissed the Respondent's mortgage foreclosure action with prejudice.

Further, on 2/6/84, the Oklahoma Supreme

Court was totally absent any constitutional or statutory authority to validate and ratify the mortgage loan that was void in its inception as in violation of law as declared under the provisions of the UCCC Loan Statutes, 14A O.S.A. 1971 §3-101 et seq., by reason, under Oklahoma Law, the Court's retroactive application of its judicial construction placed upon the UCCC Credit Sales Statutes, 14A O.S.A. 1971 §2-101 et seq., after the Petitioner Butler had acquired the right of legal exemption from the demands of Respondent herein under the said void mortgage loan, is to all intents and purposes is the same in its effect as an amendment of the said statutes by means of a legislative enactment, which is repugnant to the provisions under Article II, Section 15, State Constitution. In McLAIN v. OKLAHOMA COTTON GROWER'S ASS'N, supra, the court held:

> "No statutory ratification or subsequent legislation can make valid a cnontract that was null and void at its inception."
> "Since the contract was incapable of ratification, that the amendatory act, if the contract was affected thereby, was void as tending to violate the obligation of contracts in

> contravention of Sections 15, Article 2 of the state constitution."

Further, in HANN et al v. CITY OF CLINTON, OKLAHOMA ex rel. SCHUETTER and five, OKL., (10th CCA) 131 F.2d 978 (1942), the court held:

> "Under law of Oklahoma the settled judicial construction placed upon a statute becomes as much a part thereof as the text itself, so far as contract rights are concerned, and in point of "imparing obligation of contract", a change of decision after rights are acquired is to all intents and purposes the same in its effect as an amendment of the law by means of a legislative enactment."

Further, the HANN court held:

> "The well recognized rule obtains in Oklahoma that the law existing at the time . . . . . enters into and becomes an essential part of the contract in such a way that the obligation of the contract cannot be impaired or its fullfillment hampered or obstructed by subsequent change in law."

Thus, the Oklahoma Supreme Court's acts complained of herein without constitutional or statutory authority, insofar as impairment of contract obligations by change in judicial decision in the construction of applicable statutes is concerned, are repugnant to Article 1,

Section 10, Federal Constitution. TIDAL OIL CO. et al v. FLANAGAN, OKL., 263 U.S. 444, 44 S.CT. 197 (1924)

Further, the said Court's act of wrongfully exercising its jurisdiction beyond the power or authority delegated to it in violation of the Federal and State Constitutions, to the detriment of the Petitioner Butler, amounts to a denial and deprivation of his rights of equal protection of the law, and due process of law, both of which are protected under the provisions of the Fourteenth Amendment, by reason, a court's acts beyond its delegated power or authority are void, VALLELY v. NORTHERN FIRE & MARINE INS. CO., 254 U.S. 348, 41 S.CT. 116 (1920), the court held:

> "Courts are constituted by authority and they cannot go beyond the power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities. They are not voidable, but simply void, and this even prior to reversal."

VII

THAT THE JUDGMENT PERMITS RESPONDENT, TO SUCCESSFULLY PLEAD, PROVE AND RELY

UPON A VOID CONTRACT IN A COURT OF LAW AS THE SOLE AND ONLY BASIS OR FOUNDATION FOR ITS CLAIM FOR RELIEF.

That said decision unlawfully permitted the Assignee-Respondent to successfully plead, prove and rely upon the said illegal and void mortgage contract to the detriment of this Petitioner. See R1-8, copy of original petition, at paragraph one (1), under Section I, and Exhibits "A" and "B" copy of mote and mortgage attached thereto. (First item entered in the record.) Further, in Respondent's Brief, Petition, and other pleadings, it pleaded, proved and relied upon the said illegal and void mortgage contract which must come in. In MILLER v. BOWEN COAL & MINING CO., Mo., 40 S.W. 2d 485 (1931), the court held:

> "In order to make out a cause of action without referring to the illegal contract, Plaintiff will not be permitted to refer to a portion only of the contract on which he proposes to found his right, but the whole of the contract must come in."

Further, in 17 C.J.S., Contracts §272, at P. 656, that states:

> "No principle of law is better

> settled than that a party to an illegal contract cannot come into a court of law and ask to have his illegal objects carried out; nor can he set up a case in which he must necessarily disclose an illegal purpose as the ground work of his claim."

Further, this Court, in CRAWFORD et al v. McCONNELL et al, Okl., 49 P.2d 551 (1935), and TATUM v. COLONIAL LIFE & ACCIDENT INSURANCE OF AMERICA, Okl. 465 P.2d 448 (1970, held:

> "Courts will not enforce, or aid in enforcement of, contract made in violation of law, nor grant relief at instance of plaintiff who, in order to prevail, is compelled to rely on illegal contract."

And in WARNER BROS, THEATRES, INC., v. COOPER FOUNDATION et al, Okl., (10th CCA) 189 F.2d 825 (1951), in citing from CRAWFORD v. McCONNELL, supra, held:

> "It is elementary and fundamental law that courts will not enforce or aid in the enforcement of, a contract made in violation of law, and relief may properly be refused, even though the invalidity of the contract is not set up on a defense ***"

Further, the WARNER Court held:

> "It is established law in Oklahoma that where plaintiff cannot establish a course of action without rely-

ing upon the illegal contract, the courts will deny relief, on such course of action."

VIII

THAT THE FEDERAL QUESTIONS NECESSARY TO INVOKE OR SUSTAIN THIS HONORABLE COURT'S JURISDICTION AROSE ON 2/6/84, AND ARE SUBJECT TO AN EXCEPTION TO THE RULE BECAUSE, TO HOLD TO SAID RULE WOULD LEAVE A SERIOUS REMEDIAL GAP WHEN THE SAID QUESTIONS AROSE BY OKLAHOMA SUPREME COURT'S UNEXPECTED AND UNANTICIPATED ACTS WITH NO AVENUE OR MEANS TO ADD TO THE RECORD.

That the Petitioner Butler was not afforded an opportunity under the present Oklahoma Appellate procedures to properly and timely raise the necessary federal questions to ordinarily invoke and sustain the Honorable Court's jurisdiction, by reason the Oklahoma Supreme Court's Acts were unexpected and unanticipated, because in 1983 in a similar case styled and numbered, REA v. WICHITA MORTGAGE CORPORATION, Okl. (UDDC) Civ 79-569-T, tried in the Federal Western District Court at Oklahoma City, Oklahoma, the Court voided a like mortgage loan, contract, because the lender was not a licensed supervised lender as in the case at bar, by applying the applicable statutes 14A O.S.A. 1971 §3-101

et seq., UCCC Loan Statues, and debtors remedies under 14A O.S.A. §5-202(2), and the settled law of Oklahoma and further, Rule 1.203 (A)(1), Rules-Civil Appellate Procedure that prohibits or prevents the Supreme Court of Oklahoma from entertaining a Petition for Rehearing when (5) Justices concur, which prevented the said Petitioner from properly and timely raising said necessary federal questions by Petition for Rehearing, therefore, the case at bar is subject to an exception to the rule by reason of the unexpected and unanticipated acts of said court on 2/6/84, with no avenue or means afforded him to add to the record for the violations of said Petitioner's Federal Constitutional rights, because to hold to said rule would leave a serious gap in the remedy for said violations of this Petitioner's constitutional rights. In SAUNDERS v. SHAW et al, 244 U.S. 317, 61 L.ED 116, 37 S.CT. 638, the Court held:

> "But when the act complained of is the act of the Supreme Court, done unexpectedly at the end of the proceeding when the plaintiff in error no longer had any right to add to the record, it would leave

> a serious gap in the remedy for infraction of constitutional rights if the party aggrieved in such a way could not come here."

CONCLUSION

That the Oklahoma Supreme Court's acts on 2/6/84, wherein it rendered, filed and ordered mandate issued instanter its judgment reversing the trial court's judgment rendered on 2/17/83 that voided the said unauthorized supervised mortgage loan dated 2/24/78, void as in violation of law, and dismissed the Respondent's mortgage foreclosure action with prejudice, amounts to a wrongful exercise of its power or authority beyond the limits delegated to it, which acts are to the detriment of the Petitioner Butler because said acts are in contravention of the provisions under Article 1, Section 10, and Amendment 14, Section 1, Federal Constitution, by reason, said acts applied retroactively the said Court's judicial construction of the UCCC Credit Sales Statutes, to reverse the previous judicial construction of the UCCC Loan Statutes, which validated and ratified the unauthorized supervised mortgage

loan, void as in violation of law, and incapable of validation and ratification due to its inherent illegalities, and further, the unanticipated and unexpected acts of said court, without any avenue or means to add to the record the unconstitutional acts perpetrated upon this Petitioner by said court, due to its Rule 1.203 (a)(1) makes this case subject to an exception to rule of raising the necessary federal questions by Petition for Rehearing in said court. Thus, the Honorable Court's jurisdiction is legally invoked over the Oklahoma Supreme Court's judgment.

WHEREFORE, premises considered, the Petitioner Butler prays that said writ be granted; that said judgment of the Oklahoma Supreme Court be reversed; that the trial court's judgment be reinstated; for all costs expended herein for the prosecution of this appeal, and for any further relief this Honorable Court may deem just equitable.

Respectfully Submitted,

James W. Butler
Petitioner, Pro Se
P.O. Box 6367
Tulsa, Oklahoma 74148
(918) 425-9860

CERTIFICATE OF MAILING
AFFIDAVIT

State of Oklahoma)
) ss
County of Tulsa)

I, James W. Butler, of legal age, first being sworn upon my oath, deposes and states:

That on the 5th day of May, 1984, I deposited in the United States Mails with the proper postage prepaid, three (3) true and exact copies of the above and foregoing Petition for Writ of Certiarori addressed to the following: Jack I. Gaither, Attorney for Respondent, Law Building, Suite 100, 500 West 7th Street, Tulsa, Oklahoma 74119 and J. Schaad Titus, Attorney for Petitioner Bank, 900 World Building, Tulsa, Oklahoma 74103

Further, the affiant saieth not.

Dated this 5th day of May, 1984.

James W. Butler

Subscribed and sworn to before me this 5th day of May, 1984.

_____
Notary Public

My Commission expires on the _____ day of _____, 1985.

APPENDIX

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IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FEDERAL NATIONAL MORTGAGE ASSOCIATION, Plaintiff-Appellant, v. JAMES W. BUTLER, and GUARANTY NATIONAL BANK, an OKLAHOMA CORPORATION, Defendants-Appellees.	)	No. 60176

O R D E R

By agreement of the parties this cause came to be submitted for disposition by the accelerated docket method cum argument.

On consideration of the record, briefs and oral argument, the court holds, for the reasons to be stated, that this appeal was timely brought and that the trial court's Judgment must be reversed and cause remanded.

1. As reflected by the supplemental record filed herein January 31, 1984, the trial court's judgment was rendered on May 25, 1983 rather than on May 23, 1983. The appeal was therefore timely commenced, within 30 days of that date, when amended petition-in-error was filed herein

on June 24, 1983.

2. The assumption of another person's loan constitutes a separate and new loan transaction under the Uniform Consumer Credit Code, 14A. O.S.A. 1981 §2-101 et seq.

2. The assumption of Barbara A. Foster's loan by the appellee Butler did not constitute a "consumer credit sale" within the purview of 14A O.S.A. 1981 §2-104.

Judgment reversed and cause remanded for further prcceedings not inconsistent with this decision.

Let the mandate issue instanter.

DONE BY ORDER OF THE SUPREME COURT THIS 6th DAY OF FEBRUARY, 1984.

MARIAN P. OPALA
PRESIDING JUSTICE

Hodges, Lavender, Hargrave, Opala and Wilson, JJ., Concur.

APPENDIX 2

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FEDERAL NATIONAL MORTGAGE ASSOCIATION,	)	
Appellant,	)	No. 60,176
vs.	)	
JAMES W. BUTLER and GUARANTY NATIONAL BANK, an Oklahoma Corporation,	)	
Appellee.	)	

O R D E R

On motion of appellee, the effectiveness of this Court's mandate, issued February 6, 1984 is stayed until further order of this court, to permit appellee to seek a Writ of Certiorari in the Supreme Court of the United States.

Appellee's motion to file Petition for Re- Out of Time is denied. Rules of Civil Appellate Procedure, Rule 1.203 (A)(1).

Appellant's motion for supersedeas bond is denied.

DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE THIS 26th DAY OF MARCH, 1984.

APPENDIX 2

Chief Justice

Barnes, C.J., Simms, V.C.J., Hodges, J., Lavender, J., Hargrave, J. - all concurring

Opala, J. - concurring in part and dissenting in part

APPENDIX 3

IN THE DISTRICT COURT OF TULSA COUNTY OKLAHOMA

FEDERAL NATIONAL MORTGAGE ASSOCIATION,	)	
Plaintiff,	)	
vs.	)	No. C 82-1072
JAMES W. BUTLER, and GUARANTY NATIONAL BANK, an Oklahoma Corporation,	)	
Defendants.	)	

JOURNAL ENTRY OF JUDGMENT

NOW ON this 17th day of February, 1983, the Motion to Dismiss as amended filed herein by the Defendant James W. Butler on the 6th day of July, 1982, and the Motion for Summary Judgment

APPENDIX 3

as supplemented filed herein by the Plaintiff, Federal National Mortgage Association on the 1st day of September, 1982, comes on for hearing in their regular order before me the undersigned Judge of the District Court; the Plaintiff, Federal National Mortgage Association appears by its attorneys Vernie C. Wilson and John V. Nicks, and the Defendant James W. Butler appears in person and by his attorney Hubert M. Bryant. The Court having heard the testimony of witnesses sworn in open court, having viewed the documentary evidence, having heard the argument of counsel having reviewed the files in this case and being fully advised in the premises finds all issues in favor of the Defendants, and against the Plaintiff. Further, the Court finds from the evidence that the Mortgage Contract dated July 24, 1978 recorded in Book 4342, Page 1962 in the office of the County Clerk of Tulsa County, Oklahoma, between Mortgage Clearing Cooperation, Mortgagee, and Barbara A. Foster, Mortgagor, is void, that the defendant Butler's Motion to Dismiss as amended should be sustained, and that the

APPENDIX 3

Plaintiff's Motion for Summary Judgment as supplemented should be denied.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Mortgage Contract dated July 24, 1978 recorded in Book 4342, Page 1962 in the office of the County Clerk of Tulsa County, Oklahoma, between Mortgage Clearing Corporation, Mortgagee, and Barbara A. Foster, Mortgagor, be and the same is hereby declared to be void.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the defendant Butler's Motion to Dismiss as amended be and the same is hereby sustained; that the Plaintiff's Motion for Summary Judgment as supplemented be and the same is hereby denied, and further, that this cause for action against the Defendants be and the same is hereby dismissed with prejudice.

RONALD L. SCHAFFER,
JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM:

APPENDIX 3

VERNIE C. WILSON,
ATTORNEY FOR THE PLAINTIFF
FEDERAL NATIONAL MORTGAGE ASSOCIATION

HUBERT H. BRYANT,
ATTORNEY FOR THE DEFENDANT
JAMES W. BUTLER

J. SCHAAD TITUS,
ATTORNEY FOR THE DEFENDANT
GUARANTY NATIONAL BANK

APPENDIX 4 OKLAHOMA STATUTES ANNOTATED

14A 1969 §2-101. Short title.- This Article shall be know and may be cited as Uniform Consumer Credit Code-Credit Sales. Laws 1969, c. 352, §2-101.

14A 1969 §2-102.- This Article applied to Consumer Credit Sales including home solicitation sales, and consumer related sales. Laws 1969, c. 352, §2-102.

14A 2969 §2-104. Definition: "Consumer Credit Sale".- (1) Except as provided in subsection (2), "Consumer Credit Sale" is a sale of goods, services, or an interest in land in which

APPENDIX 4

(a) credit is granted by a person who regularly engages as a seller in credit transactions of the same kind;

(b) the buyer is a person other than an organization;

(c) the goods, services, or interest in land are purchased primarily for a personal, family, household, or agricultural purpose;

(d) either the debt is payable in installments or a credit service charge is made; and

(e) with respect to sale of goods or services, the amount financed does not exceed Twenty-five thousand Dollars ($25,000.00).

(2) Unless the sale is made subject to this act by agreement (Section 2-601), "Consumer Credit Sale" does not include (a) a sale in which the seller allows services pursuant to a lender credit card or similar arrangement; or (b) except as provided with respect to disclosure (Section 2-301) and debtor's remedies (Section 5-201), a sale of an interest in land if the credit service charge does not exceed ten percent (10%) per year calculated according to

the Acturial Method on the unpaid balances of the amount financed on the assumption that the debt will not be paid before the agreed term. Laws 1969, c. 352, §2-104.

14A 1969 §2-101. Short title.- This Article shall be known and may be cited as Uniform Consumer Credit Code-Loans. Laws 1969, c. 352, §2-101.

14A 1969 §3-102. Scope.- This Article applies to consumer loans; in addition Part 6 applied to consumer related loans. Laws 1969, c. 352, §3-102.

14A 1976 §3-104. Definition: "Consumer Loan".- Except with respect to a loan primarily secured by an interest in land (Section 3-105), or except with respect to loans granted by institutions of post secondary education, and said loans by institutions of post secondary education shall be defined as consumer related loans under the provisions of Section 3-602 of this act, a "consumer loan" is a loan made by a person regularly engaged in the business of making loans in which

APPENDIX 4

(1) the debtor is a person other than an organization;

(2) the debt is incurred primarily for a personal, family, household or argicultural purpose;

(3) either the debt is payable in installments or a loan finance charge is made; and

(4) either the principal does not exceed Twenty-five Thousand Dollars ($25,000.00) or the debt is secured by an interest in land. Amended by Laws 1976, c. 190, §1, emerg., June 4, 1976.

14A 1969 §3-105. Definition: "Loan primarily secured by an interest in land".- Unless the loan is made subject to this Act by agreement (Section 3-601), and except as provided with respect to disclosure (Section 3-301) and debtor's remedies (Section 5-201), "consumer loan" does not include a "loan primmarily secured by an interest in land," if at the time the loan is made the value of this collateral is substantial in relation to the amount of the loan, and the loan finance charge does not exceed ten percent

APPENDIX 4

(10%) per year calculated according to the Acutrial Method on the unpaid balances of the principal on the assumption that the debt will be paid according to the agreed terms and will not be paid before the end of the agreed term. Laws 1969, c. 352, §3-105.

14A 1969 §3-107. Definitions: "Lender"; "Precomputed"; "Principal".- (1) Except as otherwise provided, "Lender" includes an assignee of the lender's right to payment but use of the term does not in itself impose on an assignee any obligation of the lender with respect to events occurring before the assignment.

(2) "Principal" of a loan means the total of

(a) the net amount paid to, receivable by, or paid or payable for the account of the debtor;

(b) the amount of any discount excluded from the loan finance charge (Subsection (2) of Section 3-109); and

(c) to the extent that payment is deferred (i) amounts actually paid or to be paid by the lender for registration, certificate of

title, or license fees if not included in (a); and (ii) additional charges permitted by this Article (Section 3-202). Laws 1969, c. 352, §3-107.

14A 1969 §3-109. Definition: "Loan finance charge".- (1) "Loan finance charge" means the sum of

(a) all charges payable directly or indirectly by the debtor and imposed directly or indirectly by the lender as an incident to the extension of credit, including any of the following types of charges, which are applicable: interest or any amount payable under a point, discount, or other system of charges, however, denominated, premium or other charge for any guarantee or insurance protecting the lender against the debtor's default or other credit loss; and

(b) charges incurred for investigating the collateral or credit worthiness of the debtor or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable unless the lender

APPENDIX 4

had no notice of the charges when the loan was made. The terms does not include charges as a result of default, additional charges (Section 3-202), delinquency charges (Section 3-203), or deferral charges (Section 3-204). Laws 1969, c. 352, §3-109.

14A 1969 §3-501. Definitions: "Supervised loan"; "Supervised lender".- (1) "Supervised loan" means a regulated loan in which the rate of the loan finance charge exceeds the rate of the loan finance charge exceeds ten percent (10%) per year as determined according to the provisions on loan finance charge for consumer loans (Section 3-201).

(2) "Supervised lender" means a person authorized to make or take assignments of supervised loans. Laws 1969, c. 352, §3-501.

14A 1969 §3-502. Authority to make supervised loans.- Unless a person is a supervised financial organization or has first obtained a license from the Administrator authorizing him to make supervised loans, he shall not engage in the business of

(1) making supervised loans; or

(2) taking assignments and undertaing direct collection of payments from or enforcement of rights against debtors arising from supervised loans. Laws 1969, c. 352, §3-502.

14A 1969 §5-202(2). Effect of violations on rights of parties.- (2) If a creditor has violated the provisions of this Act applying to authority to make supervised loans (Section 3-502), the loan is void and the debtor is not obligated to pay either the principal or loan finance charge. If he has paid any part of the principal of the loan finance charge, he has a right to recover the payment from the person violating this Act or from an assignee of that person's rights who undertakes direct collection of payments or enforcement of rights arising from the debt. Laws 1969, c. 352, §5-202.

15 1971 §108. Consideration must be lawful.- The consideration of a contract must be lawful. R.L. 1910, §928.

15 1971 §109. Effect of illegality of consideration.- If any part of a single considera-

APPENDIX 4

tion for one or more objects, or of several considerations for a single object, is unlawful, the entire contract is void. R.L. 1910, §929.

15 1971 §211(1). What contracts are unlawful.- Those contracts are unlawful which are:

1. Contrary to an express provision of law.

APPENDIX 5 OKLAHOMA CONSTITUTIONAL LAW

ARTICLE II, §15. Bills of attainder-Ex post facto laws-Obligation of contracts-Forfeitures.- No bill of attainder, ex post facto law, nor any law impairing the obligation of contracts, shall ever be passed.

APPENDIX 6 FEDERAL CONSTITUTIONAL LAW

ARTICLE I, SECTION 10. No State shall enter into any Treaty, alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainer, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

APPENDIX 6

AMENDMENT IV, SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX 7

12 U.S.C. §1709-1a. Interest limitations of state constitutions.

(a) The provisions of the constitution of any state expressly limiting the amount of interest which may be charged, taken, received, or reserved by certain classes of lenders and the provisions of any law of that State expressly limiting the amount of interest which may be charged, taken, received, or reserved shall not

not apply to-

(1) any loan or mortgage which is secured by a one to four family dwelling and which is (A) insured under title I or II of the National Housing Act [12 USCS §§1701 et seq] or (B) insecured, guaranteed, or made under chapter 37 of title 38, United States Code [38 USCS §§1801 et seq]; or

(2) any temporary constitution loan or other interim financing is arranged, the intention to obtain permanent financing substantially by means of loans or mortgages so insured, guaranteed, or made as declared.

(b) The provisions of this section shall apply to such loans, mortgages, or other interim financing made or executed in any State until the effective date (after the date of enactment of this section) [enacted June 30, 1976] of a provision of law of that State limiting the amount of interest which may be charged, taken, received, or reserved on such loans, mortgages or financing. (June 30, 1976, P.L. 94-324, §8, 90 Stat. 722)

Disclosure Pursuant to Federal Consumer Credit Protection Act
(Truth in Lending Statement)

Loan No 11,522

Amount of Loan $ 14,100.00 Contract Rate 9.5 % Term 360 Months

MONTHLY PAYMENTS

Principal and Interest Payment		$ 118.58
Escrow Payment		
Hazard Insurance	$ 10.75	
Mortgage Insurance	$ 5.86	
Taxes	$ 17.81	
	$	
Total Escrow Payment		$ 34.42
Total Payment		$ 153.00
Interest from to		$
Adjusted 1st Payment		$

The first payment will be due the First Day of ....
September , 19 78 in the amount of
$ 153.00 and monthly thereafter in the amount of
$ 153.00 until further notice. Make payments to:

MORTGAGE CLEARING HOUSE
P O Box 7526, Tulsa, Oklahoma 74105

PLEASE SHOW ABOVE "LOAN NO" ON PAYMENTS

Prepaid Finance Charge	$ 640.33	Finance Charge	
Amount Financed	$ 13,459.67	Expressed as an Annual Percentage Rate	10.5 %

LATE CHARGES -- Payments are due on the first day of each month, and, if not received before the close of business on the 15th day of the month, a late charge of 4% will be assessed if an FHA insured loan and 4% if a VA guaranteed loan or a Conventional loan.

PREPAYMENT PENALTY -
NONE

TRANSFER FEE - A reasonable charge is made if the property is transferred to third parties.

SERVICE CHARGES - No service charge is made on FHA insured loans and VA guaranteed loans. Service charge on Conventional loans, when required is ¼ of 1% per year; the monthly amount is collected and is included in the escrow payment, and is reflected in the FINANCE CHARGE and monthly payment, stated above.

INSURANCE - Fire and other hazard insurance, with a Standard New York Mortgage Clause is required from a source of mortgagor's choice, in an amount, not less than the original mortgage, written by an acceptable company with not less than BBB+ rating in Best's Key Rating Guide. A reasonable charge is made if policies are substituted at other than annual premium installment paying dates. Credit Life, Accident, Health, or Loss of Income insurance is not required in connection with this transaction. Mortgage insurance premiums on FHA insured loans, at a charge of ½ of 1% per year, and Conventional loans, when required, at a charge of ¼ of 1% per year, are included in the escrow payment and are reflected in the FINANCE CHARGE and monthly payment stated above. Flood insurance is required on all properties located in potential flood areas.

PAYMENT CHANGES - The total principal and interest payment on the loan is constant. The total payment can be expected to vary because of changes in rates on escrow items.

TERMS VARIATION - Mortgagee is a supervised lender under the Consumer Credit Code of the State of Oklahoma. Printed text in this transaction are as approved by GNMA, FNMA, FHA, VA or other governmental agencies as of the date of the closing hereof, and may be contrary to the provisions of such code. This transaction is not intended to violate such code, and it is understood that Mortgagee will waive any provision that is prohibited by such code, and charges collected contrary thereto are to be refunded.

This transaction involves real property as indicated by initial below

X 1. This transaction involves financing the acquisition of real property to be used as the residence of borrower; none of the loan funds have been passed on to borrower or the sales price or otherwise.

2. This transaction involves real property to be used by borrower as a residence and is to finance the construction thereof or is to refinance a construction loan with the loan being committed prior to completion of construction.

3. The transaction involves refinancing real property owned by and occupied or to be occupied, by borrower as a residence. Borrower has been furnished two copies of Notice of Opportunity to Rescind. (If more a Charge indicated above.)

4. This transaction does not involve real property which is used or expected to be used as the residence of borrower.

The undersigned certifies that the property is free and clear of all liens and encumbrances except the mortgage lien of the herein concerned loan, that no outstanding financing is due or comes due with the property; and that there are no bills outstanding for labor, material or otherwise for which a lien of any nature may be claimed.

The undersigned acknowledges receipt of copies of all executed instruments, notices and advance disclosure as required and certifies that such instruments comprise the total understanding between the parties, and there are no outstanding oral agreements or covenants of any nature. All representations herein and in borrower's application are and were for the purpose of inducing Mortgage Clearing Corporation to disburse the above funds, and it is understood that the loan transaction would not be made if any of such representations were known to be false. All representations are certified to be true without reservation, and the funds are authorized to be disbursed according to the settlement statement.

Secretary Of Housing & Urban Development

Barbara A. Foster

DEFENDANT'S EXHIBIT -/-

BEST AVAILABLE COPY

11,522/mj

SETTLEMENT STATEMENT

11,522

422-088256-203

C. NOTE: This form is prepared to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. NAME OF BORROWER	E. NAME OF SELLER	F. NAME OF LENDER
Barbara A. Foster,a single person	Secretary of Housing and Urban Development	MORTGAGE CLEARING HOUSE Box 7630 / Tulsa, Oklahoma 74105

G. PROPERTY LOCATION	H. SETTLEMENT AGENT	I. SETTLEMENT DATE
4945 North Treton,Tulsa,Okla. 74126 11/12,Northridge Addition,Tulsa Co..	American Title Ins. Co. PLACE OF SETTLEMENT Lenders Office	July 24,1978

J. SUMMARY OF BORROWER'S TRANSACTION

100 GROSS AMOUNT DUE FROM BORROWER	
101. Contract sales price	14,500.00
102. Settlement charges to borrower (line 1400)	227.84
103.	
104.	
120. GROSS AMOUNT DUE FROM BORROWER	14,727.84
200 AMOUNTS PAID BY OR IN BEHALF OF BORROWER	
201. Deposit or earnest money	400.00
202. Principal amount of new loan(s)	14,100.00
203.	
204.	
205.	
220. TOTAL PAID BY/FOR BORROWER	14,500.00
300 CASH AT SETTLEMENT FROM/TO BORROWER	
301. Gross amount due from borrower (line 120)	14,727.84
302. Less amounts paid by/for borrower (line 220)	14,500.00
303. CASH (☐ FROM) (☐ TO) BORROWER	227.84

K. SUMMARY OF SELLER'S TRANSACTION

400 GROSS AMOUNT DUE TO SELLER	
401. Contract sales price	14,500.00
402.	
403.	
420. GROSS AMOUNT DUE TO SELLER	14,500.00
500 REDUCTIONS IN AMOUNT DUE TO SELLER	
501. Excess deposit (see instructions)	400.00
502. Settlement charges to seller (line 1400)	1,490.28
503. Payoff of first mortgage loan	
504. Payoff of second mortgage loan	
505.	
520. TOTAL REDUCTION AMOUNT DUE SELLER	1,890.28
600. CASH AT SETTLEMENT TO/FROM SELLER	
601. Gross amount due to seller (line 420)	14,500.00
602. Less reductions in amount due seller (line 520)	1,890.28
603. CASH (☐ TO) (☐ FROM) SELLER	12,609.72

L. SETTLEMENT CHARGES

	PAID FROM BORROWER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT
700 TOTAL SALES/BROKER'S COMMISSION based on price $ 14,500. @ 5 %		
701. Commission paid at settlement to Harry DeFew		725.00
800 ITEMS PAYABLE IN CONNECTION WITH LOAN		
801. Loan origination fee 1 %		
802. Loan discount 3.25 %		141.00
803. Appraisal Fee to		458.25
804. Credit Report to		
805. Mortgage Insurance Application Fee to	(9.00)	9.00
806.		
900 ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE		
901. Interest from 7-24 to 7-31 @ $ 3.67 /day	29.36	
902. Mortgage Insurance Premium for months to		
903. Hazard Insurance Premium for 1 years to Farmers Ins. Co.	129.00	
904.		
1000 RESERVES DEPOSITED WITH LENDER		
1001. Hazard insurance 2 months @ $ 10.75 per month	21.50	
1002. Mortgage insurance 2 months @ $ 5.86 per month	11.72	
1003. County property taxes 9 months @ $ 17.81 per month 205.581 .55890	45.26	115.03
1004. months @ $ per month		
1100 TITLE CHARGES		
1101. Settlement or closing fee to American Title Ins. Co.		35.00
1102. Abstract or title search to		
1103. Title examination to		
1104. Title insurance to		
1105. Lender's coverage $		
1106. Owner's coverage $		
1200 GOVERNMENT RECORDING AND TRANSFER CHARGES		
1201. Recording fees: Deed $ 2.50 Mortgage $ 4.50 Releases $		7.00
1202. State tax/stamps: Deed $ Mortgage $		
1300 ADDITIONAL SETTLEMENT CHARGES		
1301. Survey to		
1302. Pest inspection to		
1303.		
1400. TOTAL SETTLEMENT CHARGES (enter on lines 103, Section J and 502, Section K)	227.84	1,490.28

BEST AVAILABLE COPY

APPENDIX 9 OKLAHOMA RULES-CIVIL APPELLATE PROCEDURES RULE 1.203 (A)(1) Accelerated Docket-Fast track

A. Any Appellate Court may advance sua sponte or by agreement of the parties, an appeal by placing it on Accelerated Docket for early disposition. The cause may be set for oral presentation with or without any record or briefs.

(1) The matter may be submitted by agreement of the parties to a panel of five(5) Justices of the Supreme Court. In such event, three (3) concurring Justices may render a decision in the case. If less than five (5) Justices concur, a petition for rehearing will lie to the entire Court. If five (5) of the Justices concur, the matter would be concluded and no petition for rehearing will be considered.

(2) 83 - 2028

No. _____

Office - Supreme Court, U.S.
FILED
JUN 11 1984
ALEXANDER L. STEVAS,
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1983

JAMES W. BUTLER and
GUARANTY NATIONAL BANK,
an Oklahoma Corporation
Petitioners

v.

FEDERAL NATIONAL MORTGAGE ASSOCIATION
Respondent

BRIEF IN RESPONSE TO PETITION FOR WRIT OF CERTIORARI

JACK I. GAITHER
Law Building, Suite 100
500 West Seventh Street
Tulsa, Oklahoma 74119
(918) 587-6764
Attorney for Petitioners

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9 pp

QUESTION PRESENTED

Whether any federal question was involved in the state court proceedings and, if so, whether such question was raised in the state court proceedings so as to make it reviewable by this Court.

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Question Presented ..... *i*

Arguments 3

I: *The assumption of the existing loan is considered to be a new loan as of the date of assumption.* 3

II: *The assumption agreement was made pursuant to a commercial venture and was not made for personal, family, household, or agricultural purposes.* 3

III: *The interest rate of the original note when it was signed by the original maker on July 24, 1978 did not exceed 10% per annum, the level for determining its classification as a consumer loan under the Oklahoma Statutes.* 4

IV: *The interest rate, being less that 10%, cer tainly did not exceed the 18% rate applicable under the Oklahoma Statute at the time petitioner assumed the loan on August 24, 1981* 4

Conclusion 5

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Title 14A, Oklahoma Statutes, §3-105 4

No. _____

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FEDERAL NATIONAL MORTGAGE ASSOCIATION
Respondent

BRIEF IN RESPONSE TO PETITION FOR WRIT OF CERTIORARI

The petition states no valid ground for certiorari. No question of federal law is involved in this litigation. No question of federal law was raised in the state court.

> " . . . It is clear that this Court is without power to decide whether constitutional rights have been violated when the federal questions are not seasonably raised in accordance with the requirements of state law. Hulbert v. Chicago, 202 U.S. 275, 50 L.Ed. 1026, 26 S.Ct. 617 (1906); Mutual Life Ins. Co. v. McGrew, 188 U.S. 291, 308, 47 L.Ed. 480, 484, 23 S.Ct. 375, 63 LRA 33 (1903). Noncompliance with such local law can thus be an adequate state ground

for a decision below." *Edleman v. People of State of California,* 73 S.Ct. 293, 344 U.S. 357, 359, 97 L.Ed. 387, 391 (1953).

See also: *Tacan v. Arizona,* 93 S.Ct. 998, 410 U.S. 351, 35 L.Ed.2d 346 (1973); *Cardinale v. Louisiana,* 89 S.Ct. 1161, 394 U.S. 437, 22 L.Ed. 398 (1969); *Torrance v. Salenger,* 297 F.2d 902, cert. denied, 82 S.Ct. 1161, 369 U.S. 887, 8 L.Ed.2d 288 (1962).

The petition does not comply with Rule 21.1(h) of the Rules of the United States Supreme Court. After the appeal was decided adversely to the petitioner by the Oklahoma Supreme Court, in furtherance of his efforts to get a free house, he has attempted to manufacture federal questions and to raise non-existent issues in his petition for certiorari.

On or about July 24, 1978, Barbara A. Foster purchased the house, the mortgage on which, is the subject of this case. To finance her purchase, Foster executed a promissory note and mortgage covering subject property. The interest rate on the original FHA insured loan as stated on the note is 9.5%. The petitioner, James W. Butler, who is engaged in the business of renting houses to tenants, purchased the house as rental property from Foster on or about August 24, 1981 when the interest rate on FHA loans was 16.5%. To finance this commercial venture, Butler assumed the note and mortgage at the original 9.5% rate of interest. From the time of his assumption to the present date, Butler has made no pay-

ments on the note. On April 26, 1982, this foreclosure action was instituted in the District Court of Tulsa, County, State of Oklahoma.

The Oklahoma Supreme Court held that the subject transaction was not a consumer loan. Such finding of the appellate state court does not involve any constitutional considerations either of the State of Oklahoma or of the United States. It is based upon sound and proper legal grounds.

I.

The assumption of the existing loan is considered to be a new loan as of the date of assumption.

"Assumption of an obligation. Any creditor who accepts a subsequent customer as an obligor under an existing obligation shall make disclosures required by this part to that customer before he becomes so obligated. If the obligation so assumed is secured by a first lien or equivalent security interest on a dwelling, and the assumption is made for the subsequent customer to acquire that dwelling, that obligation shall be considered a loan made to finance the purchase of that dwelling." *Rule 226.8(k), Regulations of the Oklahoma Administrator, Department of Consumer Affairs, Uniform Consumer Credit Code.*

II.

The assumption agreement was made pursuant to a commercial venture and was not made for personal, family, household, or agricultural purposes.

"Q. When you purchased this house, 4945 North Trenton, did you purchase it with a view in mind to rent it out to tenants?

A. Yes I did.

Q. And you never intended to live there yourself?

A. No, I had no intention of living there."
(Butler Dep. p. 5).

" . . . a 'consumer loan' is a loan made by a person regularly engaged in the business of making loans in which . . . (2) the debt is incurred primarily for a personal, family or household purpose; . . ."
Title 14A, Ok. Stat., §3-104.

III.

The interest rate of the original note when it was signed by the original maker on July 24, 1978 did not exceed 10% per annum, the level for determining its classification as a consumer loan under the Oklahoma Statutes.

" . . . 'consumer loan' does not include a 'loan primarily secured by an interest in land', if at the time the loan is made . . . the loan finance charge does not exceed ten percent (10%) per year. . . " *Title 14A, Ok. Stat.*, §3-105.

IV.

The interest rate, being less than 10%, certainly did not exceed the 18% rate applicable under the Oklahoma Statute at the time petitioner assumed the loan on August 24, 1981.

" . . . 'consumer loan' does not include a 'loan primarily secured by an interest in land', if at the time the loan is made . . . the loan finance charge does not

exceed eighteen percent (18%) per year . . . " *Title 14A, Ok. Stat.,* §3-105, as amended effective March 26, 1980.

CONCLUSION

The decision of the Oklahoma Supreme Court is based upon findings of fact and interpretation of Oklahoma statutes. No federal questions or issues are involved. The petition for certiorari should be denied.

Respectfully submitted,

JACK I. GAITHER
Law Building, Suite 100
500 West Seventh Street
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918-587-6764

Attorney for Petitioners

Office - Supreme Court, U.S.
FILED
JUN 18 1984
ALEXANDER L. STEVAS
CLERK

83-2028

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

JAMES W. BUTLER and
GUARANTY NATIONAL BANK,
an Oklahoma Corporation,
Petitioners,

vs.

FEDERAL NATIONAL
MORTGAGE ASSOCIATION,
Respondent.

BRIEF IN REPLY TO BRIEF IN RESPONSE TO PETITION FOR WRIT OF CERTIARORI

JAMES W. BUTLER
PETITIONER, PRO SE
P.O. BOX 6367
TULSA, OKLAHOMA 74148
(918) 425-9860

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BRIEF IN REPLY TO BRIEF IN RESPONSE TO PETITION FOR WRIT OF CERTIARORI

The Respondent's Brief in Response to the Petition for Writ of Certiarori is totally absent any merit, either in law, or fact, and should be disregarded for the reasons and upon the grounds hereinafter set forth:

I

THAT THE 9.5% per annum rate of interest is only one of three factors included in the calculation of the 10.5% per annum finance charges applicable to the loan in issue dated 7/24/78.

The Respondent in its opening statement, and Propositions III, and IV, of its Response, has attempted to deliberately and willfully confuse and mislead this HONORABLE COURT by stating to the effect that the rate of interest is 9.5% per annum on the unauthorized supervised consumer mortgage loan in issue dated 7/24/78 is less than 10.5% per annum, when said rate of interest is only one of the three factors which make up the finance char-

ges of the instant loan that yields a 10.5% per annum rate, because said Respondent omitted mentioning the mortgage insurance and other prepaid charges, hence, the said omissions amounts to an alteration of the wording, and meaning of the Oklahoma UCCC Statutory definition of loan finance charges under the provisions of 14A O.S.A. 1969 §3-109.

"(1) 'Loan finance charge' means the sum of (a) * * * * * * * * * *, including any of the following types of charges, which are applicable: interest on any amount payable under a point, discount, or other systems of charges, however denominated, premiums or other charges, for any guarantee or insurance protecting the lender against the debtor's default or other credit loss," See Statement of the Case, paragraph one (1), at page 13, and Propositions I, and II, in the Petition for Writ of Certiarori.

THAT THE said loan in issue was rendered void ab initio and in toto as in violation of law and was non existing on 8/24/81 when this Petitioner assumed the same.

That Propositions I, and II, in the Response Brief are likewise further attempts to confuse and mislead this HONORABLE COURT by the Respondent in stating to the effect that the unauthorized supervised mortgage loan in issue was an existing obligation, when in fact, on 7/24/78, the said loan was non existing under the provisions of the Oklahoma UCCC loan statutes 14A O.S.A. 1969 §5-202(2), by reason, said loan was rendered void ab initio and in toto as in violation of law, and incapable of validation or ratification under any set circumstances, thus, this Petitioner could not legally assume the non existing obligation. See KUYKENDALL v. MALERNEE, Okl. App., 516 P.2d 558 (1973), and MCLAIN v. OKLAHOMA COTTON GROWERS' ASS'N, Okl, 255 P. 260 (1927). See Propositions II, and III, in Petition for Writ of Certiarori. "Effect of violations on rights of parties.- (2) If

a creditor has violated the provisions of this Act applying to authority to make supervised loans (Section 3-502), the loan is void and the debtor is not obligated to pay either the principal or loan finance charge. If he has paid any part of the principal of the loan finance charge, he has a right to recover the payment from the person violating this Act or from an assignee of that person's rights who undertakes direct collection of payments or enforcement of rights arising from the debt." 14A O.S.A. 1969 §5-202(2).

III

THE original mortgage loan dated 7/24/78 could not be insured by FHA at any time because the original mortgagee made the said loan in violation of law, and held it out to FHA as being valid and enforceable in order to obtain mortgage insurance, which amounted to a misrepresentation and fraud.

The Respondent's claim that the said mortgage loan in issue was insured by FHA is without merit, by reason, 12 USCS §1709(e)

prohibits FHA from insuring such contracts that are void and unenforceable as in the case at bar, especially when the original mortgagee misrepresents and pepetrates fraud upon FHA to obtain insurance by holding the same out as being valid and enforceable. "Any contract of insurance heretofore or hereafter executed by the Secretary under his title shall be conclusive evidence of the eligibility of the loan or mortgage for insurance, * * * * * * * * * * * * *, except for fraud or misrepresentation on the part of such approved financial institution or approved mortgagee." (Emphasis Added) 12 USCS §1709(e).

CONCLUSION

The decision of the Oklahoma Supreme Court is solely based upon its retroactive application of its judicial construction of the non applicable UCCC CREDIT SALES STATUTES 14A O.S.A. 1981 §2-101 et seq., which is clearly and affirmatively demonstrated within

its order dated 2/6/84, attached to the Petition for Writ of Certiarori as Appendix 01, at page i, of the APPENDIX, whixh judgment was unexpected and unanticipated by this Petitioner and raised for the first time the duly required federal questions, therefore, the Petition for Writ of Certiarori should be sustained, because to deny the same and holding to the said rule would leave a serious gap in the remedy for such violations of this Petitioner's constitutional rights protected under the Fourteenth Amendment and Article I of the Federal Constitutional. SAUNDERS v. SHAW et al, 244 U.S. 317, 61 L.Ed. 1163, 37 S.Ct. 638 (1920).

Respectfully submitted,

James W. Butler
Petitioner, Pro Se
P.O. Box 6367
Tulsa, Oklahoma 74148
(918) 425-9860

CERTIFICATE OF MAILING-AFFIDAVIT

STATE OF OKLAHOMA)
) ss
COUNTY OF TULSA)

I, JAMES W. BUTLER, of legal age, first being sworn upon my oath, deposes and states:

That on the 13th day of June, 1984, I deposited in the United States Mails with the proper postage prepaid, three (3) true and exact copies of the above and foregoing Reply addressed to the following: Jack I. Gaither, Attorney for Respondent, Law Building, Suite 100, 500 West 7th Street, Tulsa, Oklahoma 74119 and J. Schaad Titus, Attorney for Petitioner Bank, 900 World Building, Tulsa, Oklahoma 74103.

Further, the affiant saieth not.

Dated this 13th day of June, 1984.

JAMES W. BUTLER

Subscribed and sworn to before me this 13th day of June, 1984.

NOTARY PUBLIC

MY COMMISSION EXPIRES ON THE 16th day of March, 1985.